IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4393 OF 1993

1. Headmistress, Dnyaneshwar
Vidyalaya, Wadala, Bombay-31

2. The Secretary, Nagrik
Sathyya Kendra, Wadala
Bombay - 31 ... Petitioners

V/s.

1. Shri Shashikant D. Utekar
B-47/5, Deonar Municipal Colony
Govandi, Bombay-43

2. The Presiding Officer
School Tribunal, Bombay

3. State of Maharashtra
having its office at
Mantralaya, Bombay ... Respondents

Mr.G.N. Salunke for Petitioners
None for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 1, 2005**

ORAL JUDGMENT:

. This Petition challenges the order of the School Tribunal allowing the appeal filed by Respondent No.1. The School Tribunal has set aside the termination order dated 30th March, 1990 and the Petitioners were directed to reinstate Respondent No.1 in his original post of Assistant Teacher alongwith the backwages.

2. The facts giving rise to the present Writ Petition are as follows:

The Petitioner had appointed Respondent No.1 for a temporary period initially by an order dated 29.4.1987 for the academic year 1987-88. Approval was also accorded for his appointment. However, the appointment was for a temporary period. The Petitioner then appointed the Respondent-teacher from 15.6.1987 with approval from Respondent No.3 for a temporary appointment. On 19.6.1989, Respondent No.1 was appointed for a third time for the academic year 1989-90 again on a purely temporary basis and approval was granted accordingly. His services came to be terminated on 28.4.1989. The Respondent-teacher filed an appeal before the School Tribunal under the Maharashtra Employees of Private Schools Act. The Petitioners claimed that the respondent was appointed on a reserved category post reserved for N.T. candidates. and that the Respondent’s appointment was purely temporary. The School Tribunal held that the Petitioner wrongly terminated the services of the Respondent-teacher. The tribunal concluded that although he was appointed on a permanent basis, the Petitioner by notice dated 28.4.1999 terminated the services of the

Respondent-teacher illegally. The Tribunal has taken the view that the Petitioner had shown a backlog of reserved candidates of 16 for the academic year 1990-91 and not all the vacancies were filled in despite the backlog. The Tribunal, therefore, held that the Petitioner ought to have appointed the Respondent-teacher. In these circumstances, the Tribunal found that since the Respondent-teacher had been working in the school for three years and approval had been accorded, his services could not be terminated.

3. It is submitted on behalf of the Petitioners that all the appointment orders that were issued to the respondent were for a temporary period. The learned Advocate points out that approval granted by the government was also for a temporary appointment and not for a permanent appointment. In these circumstances, it is submitted that the Tribunal could not have directed the Petitioner to continue the respondent in service from the academic year 1990-91. Reliance is placed on the judgment of the Supreme Court in the case of *Hindustan Education Society & Anr. v/s. Sk.Kaleem Sk.Gulam Nabi & Others*, **1998 (2) Bom.C.R. 146** where it has been held that when a vacancy is filled up on a temporary basis, the Tribunal cannot direct that such an employee should be treated as a permanent teacher. This

Court in the case of **Writ Petition No.2423 of 1993** *(The Secretary, The South Indian Association, Shastri Nagar, Dombivli & Anr. v/s. Sunita Shrikant Sache & Anr.)* and **Writ Petition No.210 of 2003** *(Anand G. Patil v/s. The President, Nagarik Sahayya Kendra & others)* has held that temporary employment could not be regularised unless approved by the Government. Besides this, there is no dispute that the respondent is from the open category and the vacancy against which he was appointed was reserved for the N.T. category. It is for this reason that he was appointed on a temporary basis. In these circumstances, it cannot be said that the Tribunal was right in allowing the respondent-teacher to continue in service.

4. In the result, the judgment and order of the Tribunal is set aside. Rule made absolute with no order as to costs.